



6355-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 15-C0006]

Johnson Health Tech Co. Ltd. and Johnson Health Tech North America, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Johnson Health Tech Co. Ltd. and Johnson Health Tech North America, Inc. containing a civil penalty in the amount of three million dollars (\$3,000,000), within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.<sup>1</sup>

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the

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<sup>1</sup> The Commission voted (3-2) to provisionally accept the Settlement Agreement and Order regarding Johnson Health Tech Co., Ltd. and Johnson Health Tech North America, Inc. Chairman Kaye, Commissioner Adler and Commissioner Robinson voted to provisionally accept the Settlement Agreement and Order. Commissioner Buerkle and Commissioner Mohorovic voted to reject the Settlement Agreement and Order.

Secretary by (INSERT DATE THAT IS 15 CALENDAR DAYS FROM PUBLICATION DATE).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 15-C0006 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Gregory M. Reyes, Trial Attorney, Office of the General Counsel, Division of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7220. SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 13, 2015.

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Todd A. Stevenson,  
Secretary.

**UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of:

JOHNSON HEALTH TECH CO.  
LTD.  
and  
JOHNSON HEALTH TECH  
NORTH AMERICA, INC.

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CPSC Docket No.: 15-C0006

**SETTLEMENT AGREEMENT**

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”) and 16 C.F.R. § 1118.20, Johnson Health Tech Co. Ltd. (“JHT”) and Johnson Health Tech North America, Inc. (“JHTNA”) (collectively, “Johnson Health Tech”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement, and the incorporated attached Order, resolve staff’s charges set forth below.

**THE PARTIES**

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16

C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. JHT is a Taiwanese corporation with its principal office located at #999, Sec. 2, DongDa Rd., Ta-Ya Dist. Taichung City, 428, Taiwan.

4. JHTNA is a corporation, organized and existing under the laws of the state of Wisconsin, with its principal place of business in Cottage Grove, Wisconsin.

#### STAFF CHARGES

5. Between September 2011 and December 2012, JHTNA imported and sold approximately 3,025 Matrix Fitness Ascent Trainers and Elliptical Trainers (“Trainers”) in the United States. JHT manufactured the Trainers.

6. The Trainers are a “consumer product,” “distributed in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and (8). Johnson Health Tech was a “manufacturer” and “retailer” of the Trainers, as such terms are defined in sections 3(a)(11) and (13) of the CPSA, 15 U.S.C. § 2052(a)(11) and (13).

7. The Trainers contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because moisture from perspiration or cleaning liquids can build up in the Trainers’ power socket, causing a short circuit. This poses a fire hazard.

8. Between March 2012 and October 2013, Johnson Health Tech received incident reports of smoking, sparking, fire, and melted power components involving the Trainers. No property damage or injuries were reported.

9. In response to these incident reports, Johnson Health Tech implemented two design changes to remedy the defect and unreasonable risk of serious injury or death associated with the Trainers.

10. Despite having obtained information that the Trainers contained a defect or created an unreasonable risk, Johnson Health Tech did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4).

11. In failing to inform the Commission immediately about the Trainers, Johnson Health Tech knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Johnson Health Tech is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

#### RESPONSE OF JOHNSON HEALTH TECH

13. This agreement does not constitute an admission by Johnson Health Tech to the staff’s charges set forth in paragraphs 5 through 12 above, including, but not limited to, the charge that the Trainers contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death; that Johnson Health Tech failed to notify the Commission in a timely manner, in accordance with Section 15(b) of the CPSA, 15 U.S.C. § 2064(b); and that there was any “knowing” violation of the CPSA as that term is defined in 15 U.S.C. § 2069(d).

14. Johnson Health Tech enters into this Agreement to settle this matter without the delay and expense of litigation. Johnson Health Tech enters into this Agreement and agrees to pay the amount referenced below in compromise of the staff's charges.

15. JHTNA voluntarily notified the Commission in connection with the Trainers. JHTNA is not aware of any report of injury or property damage associated with the Trainers and reported issue but carried out a voluntary recall in cooperation with the Commission.

16. At all relevant times, JHTNA had a product safety compliance program, including dedicated quality control/product safety personnel and appropriate product safety testing.

#### AGREEMENT OF THE PARTIES

17. Under the CPSA, the Commission has jurisdiction over the matter involving the Trainers and over JHTNA. JHT has agreed to a limited waiver of jurisdictional defenses solely for the purpose of entering into this Settlement Agreement.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Johnson Health Tech or a determination by the Commission that Johnson Health Tech violated the CPSA's reporting requirements.

19. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Johnson Health Tech shall pay a civil penalty in the amount of three million dollars (\$3,000,000)

within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: <http://www.pay.gov> for allocation to and credit against the payment obligations of Johnson Health Tech under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

20. All unpaid amounts, if any, due and owing under the Agreement shall constitute a debt due and immediately owing by Johnson Health Tech to the United States, and interest shall accrue and be paid by Johnson Health Tech at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). Johnson Health Tech shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance or exercise any other rights granted by law or in equity, including but not limited to referring such matters for private collection, and Johnson Health Tech agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States or its agents or contractors pursuant to this paragraph. Johnson Health Tech shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

21. After staff receives this Agreement executed on behalf of Johnson Health Tech, staff shall promptly submit the Agreement to the Commission for provisional



acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16<sup>th</sup> calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

22. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Johnson Health Tech, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

23. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Johnson Health Tech, and (ii) and the date of issuance of the final Order, for good and valuable consideration, Johnson Health Tech hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Johnson Health Tech failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

24. JHTNA has, and shall maintain, a program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed, or sold by JHTNA. This program contains, or will be modified to include, the following elements:

- a. written standards and policies;
- b. written procedures that provide for the appropriate forwarding to compliance personnel and the product hazard incident review committee of all information that may relate to, or impact, CPSA compliance including all reports and complaints involving consumer products, whether an injury is referenced or not;
- c. a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- d. effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise;
- e. JHTNA senior management responsibility for CPSA compliance and for violations of the statutes and regulations enforced by the Commission;
- f. board oversight of CPSA compliance; and
- g. retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon reasonable request.

25. JHTNA shall implement, maintain, and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed, or sold by JHTNA:

- a. information required to be disclosed by JHTNA to the Commission is recorded, processed, and reported in accordance with applicable law;
- b. all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law; and
- c. prompt disclosure is made to JHTNA's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, JHTNA's ability to record, process, and report to the Commission in accordance with applicable law.

26. Upon reasonable request of staff, JHTNA shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. JHTNA shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate JHTNA's compliance with the terms of the Agreement.

27. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

28. Johnson Health Tech represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Johnson

Health Tech, enforceable against Johnson Health Tech in accordance with its terms.

Johnson Health Tech will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Johnson Health Tech pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Johnson Health Tech represent and warrant that they are duly authorized by Johnson Health Tech to execute the Agreement.

29. The signatories represent that they are authorized to execute this Agreement.

30. The Agreement is governed by the laws of the United States.

31. The Agreement and the Order shall apply to, and be binding upon, Johnson Health Tech and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject Johnson Health Tech, and each of its successors, transferees, and assigns, to appropriate legal action.

32. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

33. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

34. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

35. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Johnson Health Tech agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

JOHNSON HEALTH TECH CO. LTD.

Dated: July 31, 2015

By: \_\_\_\_\_  
Jason Lo  
Chief Executive Officer  
Johnson Health Tech Co. Ltd.  
#999, Sec. 2, DongDa Rd., Ta-Ya Dist.  
Taichung City, 428, Taiwan

JOHNSON HEALTH TECH NORTH AMERICA, INC.

Dated: July 31, 2015

By: \_\_\_\_\_  
Nathan Pyles  
President  
Johnson Health Tech North America, Inc.  
1600 Landmark Drive  
Cottage Grove, WI 53527

Dated: July 29, 2015

By: \_\_\_\_\_  
Matthew R. Howsare  
Counsel to Johnson Health Tech North America, Inc.  
Mintz Levin

701 Pennsylvania Avenue NW, Suite 900  
Washington, DC 20004

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION

Stephanie Tsacoumis  
General Counsel

Mary T. Boyle  
Deputy General Counsel

Mary B. Murphy  
Assistant General Counsel

Dated: July 31, 2015

By: \_\_\_\_\_  
Gregory M. Reyes  
Trial Attorney  
Division of Compliance  
Office of the General Counsel

**UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION**

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In the Matter of:

JOHNSON HEALTH TECH CO. LTD.

and

JOHNSON HEALTH TECH  
NORTH AMERICA, INC.

---

CPSC Docket No.: 15-C0006

**ORDER**

Upon consideration of the Settlement Agreement entered into between Johnson Health Tech Co. Ltd. and Johnson Health Tech North America, Inc. (“Johnson Health Tech”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Johnson Health Tech, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

**ORDERED** that the Settlement Agreement be, and is, hereby, accepted; and it is

**FURTHER ORDERED** that Johnson Health Tech shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of three million dollars (\$3,000,000) within thirty (30) days after service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>. Upon the failure of Johnson Health Tech to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Johnson Health Tech at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Johnson Health Tech fails to make such payment or to

comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 13th day of August, 2015.

**BY ORDER OF THE COMMISSION:**

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Todd A. Stevenson, Secretary  
U.S. Consumer Product Safety Commission

[FR Doc. 2015-20332 Filed: 8/17/2015 08:45 am; Publication Date: 8/18/2015]